

Part 15 Secondary Market

373 Overview of the Secondary Market for FSA Guaranteed Loans

A

Overview

The secondary market is a mechanism that allows lenders to obtain liquidity to make additional loans. Through the secondary market, the lender may:

C reduce their interest rate risk

Note: The lender can transfer the risk of interest rate increases to the secondary market through the sale of the guaranteed portion of the loan.

C increase liquidity

Note: The lender can use funds received from a loan sale for additional lending or investing activity.

C increase return on investment

Note: By selling the loan to the secondary market and keeping a servicing fee, a lender may increase their return on the loan and reduce their interest rate risk.

C increase the flexibility of loan terms.

Note: The presence of the secondary market creates the ability for lenders to provide longer fixed rate terms than they would normally offer.

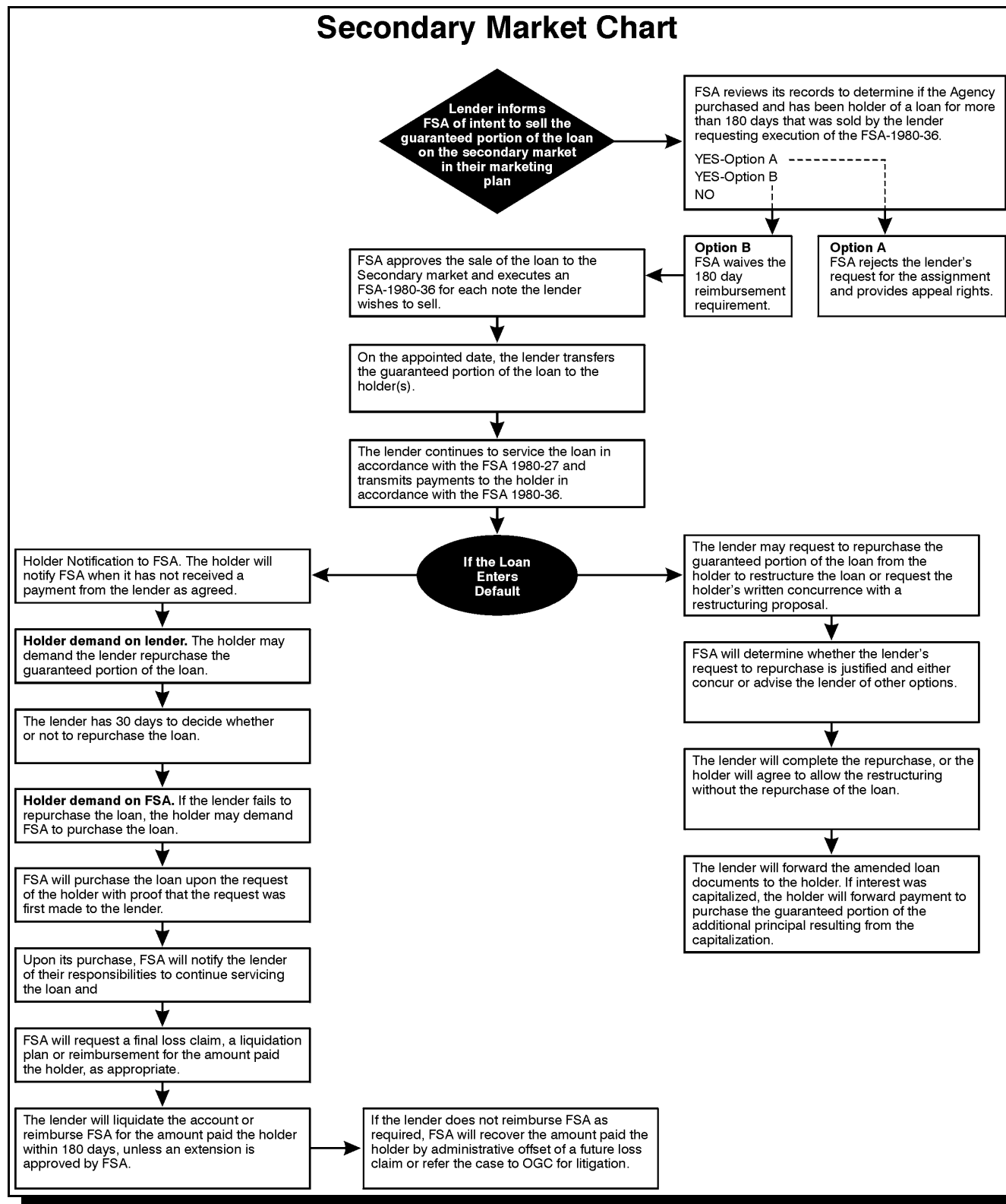
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373 Overview of the Secondary Market for FSA Guaranteed Loans (Continued)

B

Secondary
Market Flowchart

Following is the secondary market flowchart.



373 Overview of the Secondary Market for FSA Guaranteed Loans (Continued)

C Holder Versus Participant	FSA makes a clear distinction between a holder of the loan and a participant in the loan.
C	A holder is a person or organization other than the lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. The holder "holds" the note and the guarantee and, therefore, is backed 100 percent by the "Full Faith and Credit" of the U.S. Government in case of default. All holders must have FSA-1980-36 that has been executed by FSA.
C	A participant is a person or organization that buys an interest in the loan in which the originating lender keeps the note, the collateral securing the note, and all responsibility for loan servicing. A participant has no claim to the guarantee in case of default. The originating lender is required to keep a minimum of 10 percent of the total loan amount in its portfolio. When FSA-1980-27 exceeds 90 percent, the lender must keep the entire unguaranteed portion.

374 Agency Requirements (7 CFR 762.160)

A Loan Requirements for Sale on the Secondary Market	<p>Subject to Agency concurrence, the lender may sell, assign or participate all or part of the guaranteed portion of the loan to one or more holders at or after loan closing, only if the loan is not in default. However, a line of credit can be participated, but not sold or assigned.</p> <p>The Agency may refuse to execute the Assignment of Guarantee and prohibit the sale when the Agency purchased and is holder of a loan that was sold by the lender that is requesting the assignment and the lender has not complied with the reimbursement requirements of § 762.144 (c)(7) (paragraph 376) of this part, except when the 180 day reimbursement or liquidation requirement has been waived by the Agency.</p> <p>The guaranteed portion of the loan may not be sold or assigned by the lender until the loan has been fully disbursed to the borrower. A line of credit may be participated prior to being fully advanced.</p> <p>The lender is not permitted to sell, assign or participate any amount of the guaranteed or unguaranteed portion of loan to the loan applicant or borrower, or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate.</p>
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**A
Loan
Requirements
for Sale on the
Secondary
Market
(Continued)**

Upon the lender's sale or assignment of the guaranteed portion of the loan, or participation of the line of credit, the lender will remain bound to all obligations indicated in the Guarantee, Lender's Agreement, the Agency program regulations, and to future program regulations not inconsistent with the provisions of the Lenders Agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.

The lender may sell, assign or participate all or part of the guaranteed portion of the loan to 1 or more holders at or after loan closing if the loan is not in default and proceeds have been fully disbursed.

Only the guaranteed portion of a loan may be sold on the secondary market. In a secondary market sale the guaranteed portion of the loan is transferred to a holder while the lender keeps servicing responsibilities for the loan.

The lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion of the loan to the applicant or borrower; members of their immediate families; their officers, directors, stockholders, or other owners; or any parent, subsidiary, or affiliate.

**B
LOC
Requirements
for Sale on the
Secondary
Market**

In a participation, the lender sells an interest in a loan but retains the note, the collateral securing the note, and all responsibility for loan servicing and liquidation. The guarantee does not encompass the participant.

The lender must retain at least 10 percent of the total guaranteed loan amount from the unguaranteed portion of the loan in its portfolio, except when the loan guarantee exceeds 90 percent, the lender must retain the total unguaranteed portion.

Participation with a lender by any entity does not make that entity a holder or a lender as defined in this part.

LOC's may be participated, but may not be sold or assigned. In a participation, the lender keeps both the note and the servicing responsibilities, the participant merely buys an interest in the loan or LOC. No Agency notification is required if the lender merely chooses to "participate" the loan.

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C**Transfer to the
Secondary
Market**

Lenders generally market guaranteed loans to investors through an intermediary or directly to Farmer Mac.

Lenders are regularly contacted by and normally maintain a list of brokers or dealers interested in the purchase of FSA Guaranteed Loans. In an average transaction, lenders take the following steps to make a typical sale of a guaranteed loan on the secondary market.

- C Contact several brokers or Farmer Mac for bids on the loan. The brokers will need to know:
 - C loan amount and the size of the guaranteed portion
 - C coupon rate (variable or fixed)

Note: If variable, the broker will need to know the interest adjustment period.
 - C if it is a new loan, when the loan will be funded
 - C maturity date
 - C payment schedule.
- C Determine loan servicing fee. Obtain a commitment on the loan servicing fee, usually ranging from 0.4 to 2 percent.
- C Select a bid. Analyze all the offers, select the most appropriate, and contact the winning broker. **Negotiations concerning premiums, fees, and additional payments for loans are to take place between the holder and the lender. The Agency will participate in such negotiations only as a provider of information.**
- C Review documents. The broker or intermediary should send the lender a purchase commitment letter. The lender must notify the FSA office that the loan is being sold and obtain the documents that the lender will need to execute. To complete the sale, the lender should sign and return 1 copy of the commitment letter to the broker along with the following:
 - C copy of the note
 - C copy of FSA-1980-27

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374 Agency Requirements (7 CFR 762.160) (Continued)

C**Transfer to the
Secondary
Market
(Continued)**

- ⌚ FSA-1980-36
- ⌚ certificate of incumbency certifying that the FSA employee signing the guarantee had the authority to sign the necessary documents, **if** requested by the holder or broker.
- ⌚ Close the transaction.
- ⌚ Upon receipt of the forms, the holder or broker prepares FSA-1980-36 and sends it to the lender in triplicate. For sales to Farmer Mac, FSA-1980-36 is prepared by the lender.
- ⌚ The lender signs all 3 forms and forwards them to FSA for execution.
- ⌚ FSA signs the forms and forwards them to the investment broker. The settlement date is established by the broker.
- ⌚ The broker returns the original copy to the lender and another copy to FSA.
- ⌚ On settlement date, the broker wires the funds to the lender.

D**Agency
Execution of
FSA-1980-36**

The lender shall provide FSA with copies of all appropriate forms used in the sale or assignment.

If a lender intends to sell the loan to the secondary market, they should inform FSA of their plans during the post-closing review (subparagraph 247 A).

In selling a loan on the secondary market, lender will occasionally break the loan into more than 1 note. For each note, FSA will need a separate FSA-1980-27 and the lender/broker or holder will need to execute a separate FSA-1980-36. See subparagraph C.

Once the lender accepts a specific buyer's offer, the lender should notify FSA that the loan is being sold. The Authorized Agency Official should inform the lender that they must submit FSA-1980-36 to FSA for execution.

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D**Agency
Executions of
FSA-1980-36
(Continued)**

Before executing FSA-1980-36, the Authorized Agency Official should review the documents to determine the following items.

- Ⓒ To whom the loan is being sold? According to subparagraph A, a loan may not be sold to the borrower or someone who has a relationship to the borrower.
- Ⓒ Is the loan delinquent? Delinquent loans may not be sold into the secondary market.
- Ⓒ Is the lender attempting to sell any of the unguaranteed portion of the loan? The lender is only permitted to sell the guaranteed portion of the loan into the secondary market.

Upon the lender's sale or assignment of the guaranteed portion of the loan, or participation of the line of credit, the lender will remain bound to all obligations indicated in the Guarantee, lender's agreement, the Agency program regulations and to future program regulations not inconsistent with the provisions of the lender's agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.

The lender will send the holder the borrower's executed note attached to the Guarantee.

The holder will succeed to all rights of the guarantee pertaining to the portion of the loan purchased.

The holder, upon written notice to the lender and the Agency, may assign the unpaid guaranteed portion of the loan. The holder must sell the guaranteed portion back to the original lender if necessary for servicing or liquidation of the account.

Once the Authorized Agency Official is satisfied that all 3 of the above conditions are met, they will execute FSA-1980-36 and return all copies to the holder.

The guarantee or assignment of guarantee in the holder's possession does not cover interest accruing 90 days after the holder has demanded repurchase by the lender, except as provided in the assignment of guarantee and § 762.144(c)(3)(iii), or interest accruing 90 days after the lender or the Agency requested the holder to surrender evidence of debt repurchase, if the holder has not previously demanded repurchase.

375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144)

A**Holder Demand
for Repurchase**

The holder may request the lender to repurchase the unpaid guaranteed portion of the loan when either:

- C** the borrower has not made a payment of principal and interest due on the loan for at least 60 days
- C** the lender has failed to give the holder its pro-rata share of any payment made by the borrower within 30 days of receipt of a payment.

The holder shall notify FSA when these circumstances exist.

When a lender is requested to repurchase a loan from the holder, the lender must consider the request according to the servicing actions that are necessary on the loan. In order to facilitate servicing and simplified accounting of loan transactions, lenders are encouraged to repurchase the loan upon the holder's request.

If the lender does not repurchase the loan, the holder must inform the Agency in writing that demand was made on the lender and the lender refused. Following the lender's refusal, the holder may continue as holder of the guaranteed portion of the loan or request that the Agency purchase the guaranteed portion. Within 30 days after written demand to the Agency from the holder with required attachments, the Agency will forward to the holder payment of the unpaid principal balance, with accrued interest to the date of repurchase. If the holder does not desire repurchase or purchase of a defaulted loan, the lender must forward the holder its pro-rata share of payments, liquidation proceeds and Agency loss payments.

If the lender believes the holder is making demand for repayment outside the allowable reasons, the lender should detail why they believe the demand is unreasonable in a refusal letter to the holder. A copy of this letter should also be forwarded to FSA.

Upon repurchase, the lender shall notify FSA by returning the original FSA-1980-36.

Continued on the next page

375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144) (Continued)

B

Lender Initiated Repurchase

If due to loan default or imminent loan restructuring, the lender determines that its repurchase is necessary to adequately service the loan, the lender may repurchase the guaranteed portion of the loan from the holder, with the written approval of the Agency.

The requirements in FSA-1980-36 are as follows:

- C the lender may demand repurchase to conduct any of the servicing actions in Part 9, 12, or 14
- C lender repurchase is not required if the holder will agree to the restructured terms of the note
- C if interest is capitalized, a new note is taken, the original note is amended, or the principal amount is modified, the lender must ensure that the assignment is amended to reflect the actual guaranteed portion held by the holder

Note: In cases involving the secondary market, a restructuring action may involve repurchase from the holder.

- C **the lender will not repurchase from the holder for arbitrage purposes. With its request for Agency concurrence, the lender will notify the Agency of its plans to resell the guaranteed portion following servicing**
- C **the holder will sell the guaranteed portion of the loan to the lender for an amount agreed to between the lender and the holder.**

If the lender chooses to repurchase the loan for servicing, SEL and CLP lenders must receive written approval from the Authorized Agency Official or SED or designee before repurchasing a guarantee. The request for approval must include the reason for repurchase; for example, IA, interest rate adjustments, default, restructuring, or liquidation; and the proposed servicing or liquidation plan, if any, for the loan or asset.

Once the request is received by FSA, the lender will receive notification of FSA's approval or rejection within 14 calendar days. PLP's do not need Agency approval to repurchase, but must repurchase the guarantee according to the terms of their FSA-1980-38.

The lender must document all attempts to repurchase the loan from the holder in the loan file.

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375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144)
(Continued)**C**
Purchase of the
Loan or Note by
FSA

With its demand on the Agency, the holder will include:

- C** a copy of the written demand made upon the lender
- C** originals of the Guarantee and note properly endorsed to the Agency, or the original of the Assignment of Guarantee
- C** a copy of any written response to the demand provided by the lender to the holder
- C** an account which the Agency can forward the purchase amount to via electronic funds transfer.

The amount due the holder from the Agency includes unpaid principal, unpaid interest to the date of demand, and interest which has accrued from the date of demand to the proposed payment date.

Upon Agency request, the lender will provide a current statement stating the unpaid principal and interest owed by the borrower and the amount due the holder. A bank officer must certify the statement. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved by the lender and the holder before payment will be approved by the Agency.

The Agency will not participate in resolution of any such discrepancy. When there is a discrepancy, the 30 day Agency payment requirement to the holder will be suspended until the discrepancy is resolved (subparagraph A).

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375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144) (Continued)

C Repurchase of the Loan or Note by FSA (Continued)

Within 30 calendar days of the holder's demand for purchase, the Authorized Agency Official shall:

⌚ review the borrower's loan file

Note: If the file indicates that a rescheduling or reamortization could correct the default then the Authorized Agency Official should remind the lender of their responsibility for expeditiously liquidating the loan collateral in the event of an FSA purchase. Restructuring of the loan cannot occur once FSA purchase occurs.

⌚ verify the amounts owed to the lender and the holder

⌚ complete FSA-1980-37 and forward it to the Finance Office for processing.

At the time of purchase by the Agency, the original Assignment of Guarantee (FSA-1980-36) will be assigned by the holder to the Agency without recourse, including all rights, title, and interest in the loan.

Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency specified in the Lender's Agreement or the Guarantee. Nor does the purchase waive any of the Agency's rights against the lender. The Agency succeeds to all rights of the holder under the Guarantee including the right to set-off against the lender.

D Repurchase Price of the Loan or Note

The repurchase by the lender will be for an amount equal to the portion of the loan held by the holder plus accrued interest.

The Agency Guarantee will not cover servicing fees that the lender accrues after the repurchase.

When the lender makes a demand on FSA to purchase the guaranteed portion of the loan, the purchase price will be equal the unpaid principal and accrued interest. See subparagraph E.

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375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144)
(Continued)

E

**Interest Paid
Upon Agency
Repurchase**

In the case of a request for Agency purchase, the government will only pay interest that accrues for up to 90 days from the date of the demand letter to the lender requesting the repurchase. However, if the lender requested repurchase from the Agency within 60 days of the request to the holder and for any reason not attributable to the holder and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of the payment (7 CFR 762.160(b)(4)(i)) (subparagraph 374 D).

If at the time the holder requests FSA to purchase a loan or note, more than 90 calendar days have passed since the holder's demand to the lender, the holder will only receive principal and interest due at the time of the holder's request to the lender.

Unless otherwise agreed to by SED and the holder, payment will be made in 30 calendar days of the receipt of the request from the holder.

376 Actions After Agency Repurchase (7 CFR 762.144)

A

**Request for
Lender
Repayment**

Within 180 days of the Agency's repurchase, the lender will reimburse the Agency the amount of purchase, plus accrued interest, in one of the following ways:

- C** by liquidating the loan security and paying the Agency its pro-rata share of liquidation proceeds
 - C** paying the Agency [from it's own capital] the full amount paid to the holder plus any accrued interest
 - C** the Agency may sell a purchased guaranteed loan on a non-recourse basis, if it determines that selling the portion of the loan that it holds is in the Government's best interest.
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376 Actions After Agency Repurchase (7 CFR 762.144) (Continued)**A
Request for
Lender
Repayment
(Continued)**

If SED has a loan in their State, which has been purchased by FSA, that they propose to sell to another lender, they will obtain agreement from the current owner of the note and security instruments and forward the following to DAFLP:

- ⌚ the reasons why the lender cannot comply with the 180-calendar-day reimbursement requirement
- ⌚ a copy of the request from the lender to whom the loan will be sold
- ⌚ economic justification for the sale price.

A nonrecourse sale will be at a price determined by DAFLP. **A non-recourse purchase from the Agency requires a written request to the Agency from the party that wishes to purchase it, and written concurrence from the lender.**

Once FSA purchases the guarantee from the holder, the Authorized Agency Official shall immediately notify the lender in writing that they must continue to service the loan and pass all payments to FSA according to FSA-1980-27. The Authorized Agency Official will request 1 of the following actions by the lender within 60 calendar days.

- ⌚ Payment of the entire purchase amount (guaranteed portion plus accrued interest) of the loan held by FSA. Details of the purchase will be provided in the FSA request including:
 - ⌚ date demand was made on the lender
 - ⌚ date demand was made on FSA
 - ⌚ name of the previous holder
 - ⌚ amount of purchase price paid by FSA
 - ⌚ daily interest accrual on the purchase amount.
- ⌚ The Authorized Agency Official shall complete RD-1980-43 and forward the payment to KCMO, St. Louis Finance Office. The lender must complete FSA-1980-41 indicating that the guarantee is to be terminated.

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376 Actions After Agency Repurchase (7 CFR 762.144) (Continued)**A
Request for
Lender
Repayment
(Continued)**

- C A properly completed RD-449-30 with loan ledgers and supporting documents. RD-449-30 will be coded for final loss review by SED or designee. If the loss amount is less than the amount held by FSA, the loss claim must include a check from the lender for the difference, plus interest up to the date of payment. See subparagraph 360 E.
- C A liquidation plan, if not already received (subparagraph 358 B). Interest accruing to FSA as holder will continue until payment is received from the lender. If liquidation is projected to take longer than 180 calendar days after FSA purchase, the lender will be requested to submit a final loss claim based on receiving the market value of the collateral. See RD-449-30 for calculation of the final loss claim.

FSA will make similar requests of the lender again after 90 and 120 calendar days. If the lender refuses or fails to comply with the request after 180 calendar days, then SED will follow the procedures in subparagraph B.

If a lender fails to comply with the requests, SED shall:

- C notify the lender of FSA's intent to collect the purchase amount by administrative offset according to RD-1951-C

Notes: Form letter RD-1951-C-1 or a similar format may be used.

An administrative offset will occur against future loss claims the lender may submit.

- C refer the case to the Regional OGC for referral to the US Attorney's office to initiate legal action to collect the amount owed FSA for purchase
- C determine whether lender status should be revoked according to 7 CFR 762.106(a)(2)(ix), if the lender is a PLP or CLP lender. See Part 4 for further information on revoking lender status.

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B**Failure to
Reimburse FSA**

If the lender does not reimburse FSA within 180 calendar days, **the lender will be liable for the repurchase amount and any expenses incurred by the Agency to maintain the loan in its portfolio or liquidate the security. While the Agency holds the guaranteed portion of the loan, the lender will transmit to the Agency any payment received from the borrower, including the pro-rata share of liquidation or other proceeds.**

If the borrower files for reorganization under the provisions of the bankruptcy code or pays the account current while the purchase by the Government is being processed, the Agency may hold the loan as long it determines this action to be in the Agency's interest. If the lender is not proceeding expeditiously to collect the loan or reimbursement is not waived under this paragraph, the Agency will demand payment by the lender and collect the purchase amount through administrative offset of any claims due the lender.

Upon approval by SED, FSA may continue as holder of the guaranteed portion of the loan until it can be refinanced or the bankruptcy plan is completed, whichever comes first. In such a situation, the Authorized Agency Official shall notify the lender that the lender must send the pro rata share of the borrower's payments directly to FSA.
